

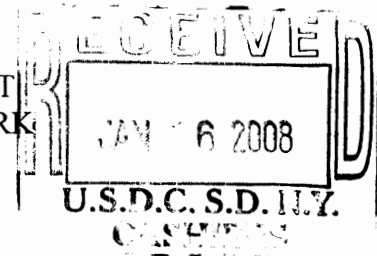
JUDGE LYNCH

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RCPI Landmark Properties, LLC
Top of the Rock LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



**RCPI LANDMARK PROPERTIES, LLC and
TOP OF THE ROCK LLC**

Plaintiffs,

v.

**FLORA DESIGN, INC. and KIMIE
MIYAMOTO (An Individual)**

Defendants.

Civil Action No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs RCPI Landmark Properties, LLC ("RCPI") and Top of the Rock LLC ("TOTR"), for their Complaint against Defendants Flora Design, Inc. ("FDI") and Kimie Miyamoto ("Miyamoto") (collectively "Defendants"), by their attorneys, Day Pitney LLP allege as follows:

I

NATURE OF THE ACTION

1. This action arises out of Defendants' unauthorized promotion of TOP OF THE ROCK WEDDINGS and X'MAS AT ROCKEFELLER CENTER WEDDINGS, which includes use of Plaintiff RCPI's TOP OF THE ROCK registered trademark and its trade name ROCKEFELLER CENTER. Additionally, in connection with their promotion of the TOP OF THE ROCK WEDDING package, Defendants have used and made clear their intention to continue using photographs that violate the license granted to visitors of the Top of the Rock Observation Deck. Finally, in connection with the X'MAS AT ROCKEFELLER CENTER WEDDING package, Defendants have used and made clear their intention to continue using photographs that exceed the limited permission expressly granted to Defendants to take photographs in front of the Rockefeller Center Christmas Tree provided they were not for commercial use.

2. Defendants' actions are in violation of Sections 32 and/or 43 of the Lanham Act in that they are likely to cause confusion as to the source and/or sponsorship of these services and to mislead the public to believe that Defendants are somehow authorized by or connected to Plaintiffs. Defendants' actions are also a violation of the license granted to visitors to the Top of the Rock Observation Deck which expressly prohibits the use of any photographs taken on the Observation Deck for commercial purposes. Finally, Defendants' actions are in violation of the express consent granted to them to take photographs in front of the Rockefeller Center Christmas Tree.

3. Plaintiffs therefore bring the present action for trademark infringement, unfair competition, trademark dilution, and breach of license agreements under the Lanham Act and

New York state law seeking permanent injunctive relief to prevent Defendants' continued unauthorized use and exploitation of Plaintiffs' Marks and photographs taken in violation of the licenses granted Defendants in order to prevent Defendants from continuing to co-opt Plaintiffs' goodwill and reputation to foster a false identification and association between Defendants and Plaintiffs.

II

THE PARTIES

4. Plaintiff RCPI Landmark Properties, LLC ("RCPI") is a Delaware limited liability company with its principal place of business at 45 Rockefeller Plaza, 630 Fifth Avenue, 12th Floor, New York, New York 10111.

5. Plaintiff Top of the Rock LLC ("TOTR") is a Delaware limited liability company with its principal place of business at 45 Rockefeller Plaza, 630 Fifth Avenue, 12th Floor, New York, New York 10111.

6. TOTR and RCPI are related companies under the common control of Tishman Speyer Properties, LP, one of the premiere building development and management companies in the world.

7. Upon information and belief, Defendant Flora Design, Inc. ("FDI") is a New York corporation with its principal place of business at 211 West 28th Street, Second Floor, New York, New York 10001.

8. Upon information and belief, Defendant Kimie Miyamoto ("Miyamoto") is an individual citizen of the State of New York residing at 7121 Loubet Street, Forest Hills, New York 11375 and the owner and president of Defendant FDI and directs, controls, and obtains pecuniary benefits from the infringing activities of FDI complained of herein.

III

JURISDICTION AND VENUE

9. Plaintiffs bring this action for direct, contributory and vicarious federal trademark infringement and unfair competition in violation of Sections 32(1) and/or 43(a) of the Lanham Act, 15 U.S.C. §§ 114(1), 1125(a); deceptive acts and practices in violation of Section 349(h) of the New York General Business Law; false advertising in violation of Section 350-e(3) of the New York General Business Law; injury to business reputation and trademark dilution in violation of Section 360-1 of the New York General Business Law; trademark infringement and unfair competition in violation of the common law of the State of New York and the several states of the United States; and, breach of contract under the common law of the State of New York.

10. This Court has original subject matter jurisdiction of this civil action pursuant to 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over all other claims asserted herein under 28 U.S.C. § 1367(a).

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) as Defendant FDI is located in this District, the acts alleged herein have substantially occurred within this District, and the claims asserted substantially arise in this District.

12. This Court has personal jurisdiction over FDI because FDI resides and does business in this District, and has committed the alleged wrongful acts during the course of its business in this District.

13. This Court has personal jurisdiction over Miyamoto because Miyamoto is a resident in the State of New York and has committed the alleged wrongful acts during the course of her business in this District.

IV

FACTS COMMON TO ALL CAUSES OF ACTION

A. RCPI, ROCKEFELLER CENTER and THE WORLD'S MOST FAMOUS CHRISTMAS TREE

14. Plaintiff RCPI is the owner of 12 landmark buildings including the home to NBC, *The Today Show*, *Saturday Night Live*, and Christie's, located on six square blocks bordered by Fifth Avenue, the Avenue of the Americas, 48th Street and 51st Street, an area commonly referred to as Rockefeller Center.

15. A symbol of art, commerce, and entertainment, RCPI's Rockefeller Center has been a major destination in New York for tourists and locals alike for decades. Since RCPI's predecessor in interest first acquired an interest in Rockefeller Center in 1996, RCPI has spent more than \$200 million to improve and modernize the 5.8 million square feet of office space and 750,000 square feet of retail space that make up Rockefeller Center. ROCKEFELLER CENTER is now the host to many popular cultural events such as The Rink at Rockefeller Center, a summer concert series televised on *The Today Show*, and recently, an authorized off-site live showing of the U.S. Tennis Open and a related virtual reality tennis game.

16. Rockefeller Plaza, located in the heart of Rockefeller Center, has also been the site for the world-famous ROCKEFELLER CENTER CHRISTMAS TREE for the last 75 years. Since at least 1951, the lighting of the ROCKEFELLER CENTER Christmas Tree has been broadcast live on NBC television around the world. In 2007 it is estimated that more than 9 million viewers watched this broadcast. (By way of comparison, the series finale of *The Sopranos* had 11.9 million viewers.) For this reason the ROCKEFELLER CENTER Christmas Tree is often referred to by the common law trademark THE WORLD'S MOST FAMOUS CHRISTMAS TREE.

17. The reoccurring image associated with this event is the image of the Christmas Tree with the Prometheus statute in the foreground. It is prominently featured each year on the NBC live broadcast and is the focus of much of the marketing and promotion done for that event. In addition, this image prominently appears on greeting cards, magnets, key chains, jewelry, Christmas Tree ornaments, and other memorabilia.

18. The total costs associated with the tree lighting event are in excess of \$1,000,000 dollars each year. The total annual budget associated with maintaining and promoting the ROCKEFELLER CENTER Christmas Tree apart from the tree lighting is more than \$100,000 per year.

19. As a result of these efforts and the broad recognition among the public of the ROCKEFELLER CENTER Christmas Tree, the image of the Christmas Tree with the statue of Prometheus functions as a designation of origin and is recognized by millions of people as a trademark associated with the owner of the property.

20. RCPI receives numerous requests from photographers seeking permission to take photographs at ROCKEFELLER CENTER. RCPI's policy with respect to photographs is stated on the ROCKEFELLER CENTER web page as follows:

Rockefeller Center allows filming and photo shoots for news stories, books, programs and films directly relating to Rockefeller Center only.

A true and correct copy of this policy is attached hereto as Exhibit A.

B. RCPI's Rights in the ROCKEFELLER CENTER Trade Name

21. When RCPI acquired Rockefeller Center in 1996, it received a license to use the ROCKEFELLER CENTER trademark and service mark from its owner, Rockefeller Group, Inc. ("RGI"). This license, however, recognizes that RCPI owns independently of any licensed right

from RGI, common law trade name rights to ROCKEFELLER CENTER that are appurtenant to its ownership of the 12 landmark buildings known and marketed as ROCKEFELLER CENTER.

22. The license agreement between RCPI and RGI with respect to the ROCKEFELLER CENTER trademarks and service marks specifically recognizes RCPI's right to enforce its trade name rights against any party not licensed by RGI.

23. The license agreement between RGI and RCPI also specifically recognized that RCPI owned all rights to the images of the buildings and other features making up ROCKEFELLER CENTER.

C. The Fame of the ROCKEFELLER Trade Name

24. The ROCKEFELLER CENTER Trade Name has been in continual use since Rockefeller Center opened in the 1930's. Since that time it has consistently been used to identify the owner of the real property consisting of the 12 landmark buildings referenced above.

25. Today more than 30,000 people work in Rockefeller Center. It is estimated that 250,000 people pass through Rockefeller Center each day or by The Rink at Rockefeller Center which is the annual site for the ROCKEFELLER CENTER Christmas Tree.

26. Since 1996, when RCPI's predecessor first acquired an interest in Rockefeller Center, through 2007, RCPI has spent millions of dollars promoting the ROCKEFELLER CENTER Trade Name in connection with commercial leasing, entertainment, special events, parties, and merchandise including photographs and other memorabilia incorporating the images associated with Rockefeller Center including the Rockefeller Center Christmas Tree.

D. The TOP OF THE ROCK

27. Plaintiff TOTR owns and operates the Observation Deck located on the 70th Floor of 30 Rockefeller Plaza branded under the name TOP OF THE ROCK. Prior to the formation of TOTR in 2005, RCPI was responsible for the development and financing for the Observation Deck.

28. When the TOP OF THE ROCK Observation Deck opened to the public on November 1, 2005, it represented the first time that the Observation Deck atop 30 Rockefeller Plaza had been available to the public since 1986. RCPI and related companies spent more than one million dollars in connection with refurbishing the Observation Deck and opening it to the public.

29. The TOP OF THE ROCK Observation Deck offers visitors 360 degree views of Manhattan that are unlike any other offered by any public observation deck in Manhattan because they are not obscured by protective fencing or other security devices, due to the unique layered architecture of 30 Rockefeller Plaza. These unobstructed views are especially inviting because of the photographic opportunities they offer.

30. As part of its plan to pay for the cost of reopening the Observation Deck, RCPI and TOTR decided to take advantage of the unique photographic opportunities from the TOP OF THE ROCK Observation Deck. The decision was made that the taking of photographs for commercial use from the TOP OF THE ROCK Observation Deck would be prohibited except as expressly allowed by TOTR.

31. Public access to the TOP OF THE ROCK Observation Deck is by ticket only. A ticket grants the holder the right of access subject to the terms and conditions specified on the ticket. Specifically, the ticket provides:

By accepting admission with this ticket, you release Top of the Rock and RCPI Landmark Properties, L.L.C. from loss, injury, or damage to you and your property in the building, even if due to our negligence. Elevator ride features flashing lights and view up into elevator shaft as elevator ascends. We may expel or refuse to admit, without refund, any person whose conduct is objectionable. Tickets valid only date and time issued. Refund or exchange up to 24 hours before scheduled time, from source of purchase. Lost, stolen, or destroyed tickets bought on site are not replaceable. You grant us permission to use your image for broadcast from or promotion of Top of the Rock. Photographs may be taken only for personal use. See full policies at ticket office and <http://www.topoftherocknyc.com>.

A true and correct copy of the Terms and Conditions set forth on each ticket issued to visitors at Top of the Rock is attached hereto as Exhibit B.

32. This policy is also clearly stated on the TOP THE ROCK web site which provides:

Photography Policy

Photography is permitted only at the observation deck at the Top of the Rock and only for private, personal and noncommercial use. Photographs cannot be published, sold, reproduced, transferred, distributed, or otherwise commercially exploited in any manner whatsoever. The use of a flash is prohibited. Movie and video cameras are prohibited. Tripods are not allowed unless otherwise agreed to in writing by TOTR.

A true and correct copy of this web page is attached hereto as Exhibit C.

33. This policy is also summarized in the FAQ section of the TOP OF THE ROCK Web site located in the Visitors Info area of the Site. In response to the FAQ "Can I bring tripods? What about video cameras?" the visitor is provided the following response:

We do not allow tripods, monopods or video cameras on the observation deck. To set up a professional photo shoot or media taping on the Observation Deck, please contact us to discuss location fees and/or other arrangements.

A true and correct copy of this web page is attached hereto as Exhibit D.

34. Enforcement of this policy is important due to the agreement between Kodak and TOTR under which Kodak has virtually an exclusive right to take professional photographs of visitors to the deck with the remarkable unobstructed New York City view behind them. The

Kodak terms of use governing internet access to these photographs prohibit any commercial use of those photographs except forwarding them to someone to consider purchasing a copy of the image. A true and correct copy of these terms and conditions are attached hereto as Exhibit E.

35. These limitations on commercial use are important to maintaining the value to Kodak of the photographic services it provides to visitors to the TOP OF THE ROCK Observation Deck and for which it pays a fee to TOTR.

36. TOTR has successfully enforced these contractual limitations against other third parties in the past.

37. TOTR makes the TOP OF THE ROCK Observation Deck available for rental for parties, corporate events, and, other special events such as weddings. All weddings are arranged through the Top of the Rock Special Events management and cost a minimum of \$50,000 for the use of the location with no other events. THE WEATHER ROOM at TOP OF THE ROCK Observation Deck can hosts up to 120 wedding guests and includes menus prepared by the chefs at the highly acclaimed CIPRIANI restaurant which also operates the RAINBOW ROOM located immediately below the Observation Deck.

E. Intellectual Property Rights in the TOP OF THE ROCK

38. On January 2, 2007, the United States Patent and Trademark Office (“U.S.P.T.O.”) granted Federal Trademark Registration No. 3,194,827 for TOP OF THE ROCK to RCPI based on a date of first use of November 1, 2005 (the “ ‘827 Registration”). This registration covers an extensive list of goods and services including “[r]estaurant, bar and catering services” in Class 43 and photography-related goods in Class 16. This registration, duly and legally issued by the U.S.P.T.O., is valid and subsisting. A true and correct copy of this registration is attached hereto as Exhibit F.

39. On July 24, 2007, the U.S.P.T.O. granted Federal Trademark Registration No. 3,268,693 for TOP OF THE ROCK to RCPI. This registration covers toy bears and jewelry based on dates of first use in September and October 2006. This registration, duly and legally issued by the U.S.P.T.O., is valid and subsisting. A true and correct copy of this registration is attached hereto as Exhibit G.

40. On February 15, 2005, RCPI filed a federal trademark application for the mark TOP OF THE NYC on an intent-to-use basis which bears the serial number 78/568,153. The application covered the same goods and services as those in the '827 Registration for TOP OF THE ROCK. The U.S.P.T.O. has issued a Notice of Allowance for the TOP OF THE ROCK NYC application and a registration will duly issue upon the U.S.P.T.O.'s acceptance of a Statement of Use to be filed by RCPI. A true and correct copy of the Notice of Allowance for the application is attached hereto as Exhibit H.

F. The Fame of the TOP OF THE ROCK Trademark

41. Since it opened to the public, there have been more than 3 million visitors to the TOP OF THE ROCK Observation Deck. Approximately 10 percent of these visitors have had their photograph taken by Kodak and one million photographs have been sold. More than \$57 million dollars of merchandise bearing the TOP OF THE ROCK mark have been sold. TOP OF THE ROCK RCPI and/or TOTR have spent hundreds of thousands of dollars promoting the Observation Deck under the name TOP OF THE ROCK.

42. As a result of these extensive efforts by RCPI and TOTR to promote the TOP OF THE ROCK Mark, the TOP OF THE MARK is a famous and distinctive mark recognized by the consumers as identifying the Observation Deck owned and operated by Plaintiffs.

G. Defendants' Business

43. Upon information and belief, Defendant Miyamoto is the president and owner of Defendant FDI.

44. Upon information and belief, Miyamoto is the owner and registrant of the Internet domain name <www.floradesignny.com> ("Defendants' Website"). A true and correct copy of the Whois report for Defendants' Website is attached hereto as Exhibit I.

45. Defendants advertise their services, including floral arrangement and wedding coordination and planning services, at Defendants' Website.

H. Defendant's Unauthorized Use of the TOP OF THE ROCK Mark and Photographs Taken from the TOP OF THE ROCK Observation Deck

46. Without authorization or permission from Plaintiffs, Defendants have advertised and continue to advertise wedding packages under the title "Top of the Rock Wedding." A true and correct copy of this advertisement taken from Defendant's Website is attached hereto as Exhibit J.

47. Upon information and belief, Defendants use a picture of a couple dressed in wedding attire taken from the Top of the Rock observation deck on the web page promoting the "Top of the Rock Wedding" package. The text below this picture touts this wedding package as follows:

No other place in the world where you will have a romantic wedding ceremony up & up in the sky: Unobstructed for 360 degrees of transparent glasses. Top of The Rock, 70th floor is the newest style of contemporary wedding for a bride and a groom. Top of The Rock, a New York City landmark is located in the heart of Manhattan. Its history began with Mr. John D. Rockefeller in 1933. Your wedding will be a thrilling and unforgettable experience. You will be celebrated by many people from the around world. Celebrating messages "Congratulations! Congratulations! Congratulations!" echoes up & up in the air.

A true and correct copy of this web page is attached hereto as Exhibit K.

48. Defendants' "Top of the Rock Wedding" package includes:

- 1) Ceremony fee
- 2) Officiant
- 3) Escort & Coordinator
- 4) Bridal Bouquet
- 5) Groom's boutonniere
- 6) Attendants Corsages(4) & Boutonniere(4)
- 7) Bride & Groom's Photography 8"x10" Framed(2)
- 8) Tickets for the Top of The Rock for Bride and Groom
- 9) T-Shirts of NY for Bride and Groom

See Exhibit K.

49. Defendants' Web site also includes photographs which on information and belief were taken by Defendant Miyamoto or those working on behalf of Defendants from THE TOP OF THE ROCK Observation Deck.

50. At no time have Plaintiffs given Defendants permission or consent to use these photographs taken from the TOP OF THE ROCK Observation Deck.

51. Defendants are using these photographs taken from the TOP OF THE ROCK Observation Deck for commercial purposes.

I. Defendants' Unauthorized Use of the ROCKEFELLER CENTER Trade Name, the Christmas Tree Image Trademark, and Photographs Taken at ROCKEFELLER CENTER

52. Defendants' advertisement for the "X'mas at Rockefeller Center Wedding" wedding package features unauthorized photographs of the Plaza Tree and a couple purportedly taken at Rockefeller Plaza, along with a "Photo session at the Rockefeller Plaza." See Exhibit L.

Defendants' Willful Conduct

53. In December 2006, Defendant Miyamoto contacted Plaintiffs in order to specifically request permission to take photographs at various points in Rockefeller Plaza and at

the Top of the Rock Observation Deck. A true and correct copy of the email correspondence between Miyamoto and Plaintiffs' representative, Brooke K. Smy, is attached hereto as Exhibit M.

54. The terms of use for all visitors at the Top of the Rock observation deck explicitly states that: "Photography is permitted at the observation deck at the Top of the Rock and only for private, personal, and noncommercial use. Photographs cannot be published, sold, reproduced, transferred, distributed, or otherwise commercially exploited in any manner whatsoever." See Exhibit C.

55. Despite being informed that there was no need for permission to be given "unless you were to use the photos for promotional purposes, etc." and despite the clear terms of use which prohibited any commercial use of photographs taken at the Top of the Rock observation deck, Defendant Miyamoto proceeded to take her photographs from Plaintiffs' locations and post them directly onto Defendants' Website.

56. On or about July 16, 2007, Plaintiffs' counsel notified Defendants of their infringement of Plaintiffs' Marks and of Defendants' violation of the terms of use for the Top of the Rock observation deck. A true and correct copy of the letter dated July 16, 2007 is attached hereto as Exhibit N.

57. Plaintiffs' counsel wrote a second warning letter to Defendants on or about September 25, 2007. A true and correct copy of the letter dated September 25, 2007 is attached hereto as Exhibit O.

58. On or about the same time, counsel for the owner of the ROCKEFELLER CENTER service mark, RGI, wrote a letter to Defendants concerning Defendants' infringement

of the ROCKEFELLER CENTER service mark. A true and correct copy of the letter from counsel for RGI dated September 25, 2007 is attached hereto as Exhibit P.

59. After initially refusing delivery of each of the three letters (Exhibits N-P), on November 6, 2007 two representatives from the office of Plaintiffs' counsel personally delivered each of the three letters to Defendant Miyamoto. Counsel for Plaintiffs extended to November 30, 2007 the deadline originally set for Defendants to respond to the letters. A true and correct copy of the letter dated November 9, 2007 concerning the extension of time is attached hereto as Exhibit Q.

60. Defendants responded to the Plaintiffs' letters in an email from Defendant Miyamoto addressed to Plaintiffs' counsel dated November 18, 2007. Defendants denied any wrong-doing and indicated that they felt that they had the right to do exactly what they are presently doing. A true and correct copy of the email from Defendant Miyamoto dated November 18, 2007 is attached hereto as Exhibit R.

61. Despite the notice of infringement and violation of the terms of use for the Top of the Rock observation deck, Defendants continue to display and use Plaintiff's Marks and the images of Defendants' locations without authorization in order to promote their own wedding-related services.

62. Defendants have engaged in these unlawful activities intentionally, willfully and in bad faith, and have continued to do so even after being put on notice of Plaintiffs' rights and the irreparable harm being caused by those acts.

63. Defendants' activities have caused and will continue to cause Plaintiffs great and irreparable harm and damage. Unless permanently restrained and enjoined by this Court,

Defendants will persist in their unlawful activities, thereby causing further damages and irreparable harm to Plaintiffs and to the public interest.

64. Due to the irreparable harm, Plaintiffs have no adequate remedy at law.

COUNT I
Federal Trademark Infringement

65. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

66. Defendants, without Plaintiffs' consent, have used and will continue to use in commerce designations confusingly similar to Plaintiffs' registered TOP OF THE ROCK mark on or in connection with the sale, offering for sale, distribution, or advertising of its goods and services. Such use is likely to cause confusion, or to cause mistake, or to deceive the consuming public.

67. Defendants' unauthorized use of the TOP OF THE ROCK Mark is likely to cause confusion among buyers and potential buyers as to whether Defendants or their project is sponsored by, affiliated with, or otherwise connected to Plaintiffs.

68. Defendants' unauthorized use of the TOP OF THE ROCK Mark in connection with the marketing or sale of their goods and services deprives Plaintiffs of the ability to control the consumer perception of the quality of the goods and services offered under the TOP OF THE ROCK Mark and places Plaintiffs' valuable reputation and goodwill in the hands of Defendants, over whom Plaintiffs have no control.

69. The aforementioned acts of Defendants constitute federal trademark infringement in violation of 15 U.S.C. § 1125(a).

70. The aforementioned acts of Defendants have been intentional, willful and in bad faith.

71. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT II

Federal Unfair Competition, False Designation of Origin, and False Descriptions

72. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

73. The aforementioned acts of Defendants constitute use in commerce of words, terms, names, symbols and devices, and combination thereof; false designation of origin; false and misleading descriptions of fact; and false and misleading descriptions of fact in commercial advertising or promotion that misrepresents the nature, characteristics or qualities of Defendants' services, goods or other commercial activities.

74. Defendants' use in commerce of Plaintiffs' Marks and images of Plaintiffs' locations constitutes unfair competition, false designation of origin, and false or misleading descriptions of fact that wrongly and falsely designate Defendants' services as originating with, or as being sponsored or approved by, or otherwise connected with Plaintiffs, in violation of Section 43(a)(1)(A) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

75. The aforementioned acts of Defendants were willfully intended to trade on the reputation and the goodwill associated with Plaintiffs' Marks and the images of Plaintiffs' Sites.

76. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said

irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT III

Deceptive Acts and Practices Under New York Law

77. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

78. The aforementioned acts of Defendants constitute deceptive acts or practices in the conduct of business, trade, or commerce, or in the furnishing of any service in New York State in violation of New York General Business Law § 349.

79. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT IV

False Advertising Under New York Law

80. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

81. By the aforementioned acts, Defendants have misleadingly advertised their services, in that Defendants made statements, used words, designs, devices, sounds or combinations thereof that were materially misleading with respect to that service.

82. The aforementioned acts of Defendants constitute false advertising in the conduct of business, trade, or commerce, or in the furnishing of any service in New York State in violation of New York General Business Law § 350-e(3).

83. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT V

Injury To Business Reputation and Dilution Under New York Law

84. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

85. Plaintiffs' Marks are distinctive marks with a strong secondary meaning.

86. Defendants' deliberate and intentional commercial use of the famous and distinctive Plaintiffs' Marks dilutes and is likely to dilute the distinctive quality of Plaintiffs' Marks and constitutes dilution under the law of the State of New York.

87. The aforementioned acts of Defendants are likely to injure the business reputation of Plaintiffs and to dilute the distinctive quality of Plaintiffs' Marks in violation of New York General Business Law § 360-1.

88. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT VI

Common Law Trademark Infringement

89. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

90. The aforementioned acts of Defendants constitute the commercial use of a designation that is likely to cause confusion as to the source of Defendants' services.

91. The aforementioned acts of Defendants constitute trademark infringement in violation of the common law of the State of New York as well as the several states of the United States.

92. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT VII

Common Law Unfair Competition

93. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

94. The aforementioned acts of Defendants constitute commercial use of a designation that is likely to cause confusion as to the source of Defendants' services.

95. The aforementioned acts of Defendants constitute unfair competition in violation of the common law of the State of New York as well as the several states of the United States.

96. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

COUNT VIII

Breach of Contract

97. Plaintiffs hereby reallege and incorporate herein the allegations set forth in the foregoing paragraphs as if fully restated herein.

98. The terms of use between Plaintiffs and all visitors of the Top of the Rock constitutes a valid and enforceable contract.

99. Defendant Miyamoto agreed to the terms of use when she visited the Top of the Rock to take the photos that appear at Defendants' Website. See Exhibit K.

100. Plaintiffs have complied with all of their obligations and duties under the terms of use.

101. Defendants' actions, including taking commercial photographs at the Top of the Rock and subsequent sale thereof, along with the use of such photos in advertisements for said services, violates the clear Terms of Use prohibiting any unauthorized commercial photography and constitutes a breach of contract under the law of the State of New York.

102. The aforementioned acts of Defendants have caused, and are causing, great and irreparable harm to Plaintiffs and, unless permanently restrained and enjoined by this Court, said irreparable injury will continue. This harm constitutes an injury for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor with respect to all the causes of action set forth above and that relief be granted as follows:

A. That Defendants and their respective officers, partners, agents, servants, affiliates, employees, attorneys, representatives, and all those in privity or acting in concert or participation with each and all of them, be permanently enjoined from:

(1) Using Plaintiffs' TOP OF THE ROCK Marks or any colorable imitations thereof or any designation confusingly similar thereto on or in connection with the advertisement or offering for sale of Defendants' services;

(2) Representing by any means whatsoever, directly or indirectly, or doing any other acts calculated or likely to cause confusion, mistake or to deceive consumers into believing that Defendants' services and any related goods are the services or products of Plaintiffs, or that there is any affiliation or connection between Plaintiffs or Plaintiffs' services and goods and Defendants and Defendants' services and goods, and from otherwise unfairly competing with Plaintiffs;

(3) Using any designation in a manner that is likely to cause the dilution of the distinctive quality of the famous Plaintiffs' Marks.

(4) Falsely advertising or marketing any of Defendants' services and related goods as "The Top of the Rock Wedding" or "X'mas at Rockefeller Center Wedding;"

(5) Using Plaintiffs' Marks to induce the belief that Defendants' business products, or services are in any way sponsored or approved by, or otherwise connected with Plaintiffs; and,

(6) using any trade practices whatsoever, including, but not limited to, those complained of herein that tend to compete unfairly with or injure Plaintiffs' Marks and the goodwill appertaining thereto.

B. That Defendants be required to:

(1) pay compensatory damages to RCPI in an amount to be determined at trial for the injuries RCPI has sustained as a direct consequence of the infringing acts complained of herein and disgorge any profits made through sales of any services and related goods by Defendants through the use of Plaintiffs' Marks;

(2) pay treble damages pursuant to 15 U.S.C. § 1117 by reason of Defendants' willful and deliberate acts of federal trademark infringement;

(3) pay treble damages under New York General Business Law §§ 349(h) and 350-d by reason of Defendants' acts of deceptive trade practices;

(4) pay all Plaintiffs' litigation expenses, including reasonable attorneys' fees and costs of this action pursuant to 15 U.S.C. § 1117 and New York General Business Law §§ 349(h) and 350-d;

(5) pay prejudgment interest to Plaintiffs;

(6) file with this Court and serve on Plaintiffs an affidavit setting forth in detail the manner and form of Defendants' compliance with the terms of this Court's injunction; and,

(6) pay compensatory damages to RCPI in an amount to be determined at trial for the injuries RCPI has sustained as a direct consequence of Defendant Miyamoto's breach of the terms of use.

D. That RCPI be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by a jury on all jury-triable issues in the Complaint as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 15, 2008
New York, New York

Respectfully submitted,

By:



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Attorneys for Plaintiffs,
RCPI Landmark Properties, LLC
Top of the Rock LLC

EXHIBIT A

- shop
- eat
- see & do
- home

film, photography request

for on-location shoots at rockefeller center

Rockefeller Center allows filming and photo shoots for news stories, books, programs and films directly relating to Rockefeller Center only.

Please contact Brooke Smy, Marketing & Communications Manager, regarding film/photo requests at Rockefeller Center and Tishman Speyer properties. For a list of other properties, please visit www.tishmanspeyer.com.

Please fill out and email or fax the form found [here](#).

Brooke K. Smy
Marketing & Communications Manager
Tishman Speyer
45 Rockefeller Plaza
New York, NY 10111
T - (212) 588-8634
F - (212) 479-8634
bsmy@tishmanspeyer.com

Please keep in mind that all filming and photography must take place in exterior locations only on the ground level.

*RCPI Landmark Properties, L.L.C., the owner of Rockefeller Center, possesses trademark rights with respect to certain images commonly associated with Rockefeller Center (e.g., the Christmas Tree, Atlas, Prometheus). These images may not be used without the express consent of either RCPI Landmark Properties, L.L.C. or Tishman Speyer Properties, and must also be properly identified as trademarked property.

Rockefeller Center/Marketing
Department Contact
45 Rockefeller Plaza 12th Floor
New York N.Y. 10111
212.588.8634 FX212.479.8634

For more information email:
filmrequest@tishmanspeyer.com

ROCKEFELLER CENTER

- ▶ JOIN THE ROCK LIST
- ▶ DIRECTIONS
- ▶ CONTACT US
- ▶ HISTORY
- ▶ WEB CAM
- Legal Notice | Privacy Policy

EXHIBIT B

TOP OF THE ROCK

OFFICIAL SPONSORS



By accepting admission with this ticket, you release Top of the Rock and RCP Landmark Properties, L.L.C. from loss, injury, or damage to you and your property in the building, even if due to our negligence. Elevator ride features flashing lights and views up into elevator shaft as elevator ascends. We may expel or refuse to admit, without refund, any person whose conduct is objectionable. Tickets valid only for date and time issued. Refund or exchange up to 24 hours before scheduled time, from source of purchase. Lost, stolen, or destroyed tickets bought on site are not replaceable. You grant us permission to use your image for broadcast from or promotion of Top of the Rock. Photographs may be taken only for personal use. See full policies at ticket office and <http://www.topoftherocknyc.com>.

EXHIBIT C

TOP OF THE ROCK TERMS AND CONDITIONS

Last updated February 1, 2006

Welcome to TopoftheRockNYC.com. Top of the Rock, LLC, RCPI Landmark Properties, L.L.C., and their respective affiliates and subsidiaries (collectively "TOTR") provide the TopoftheRockNYC.com web site (the "Site") and the related services to you subject to the following terms and conditions (the "Terms"). Please read the Terms carefully before using or visiting the Site. IF YOU DO NOT AGREE TO THE TERMS, DO NOT VISIT OR USE THE SITE. By using or visiting the Site, you expressly agree, to the same extent as if you had signed the Terms, to be bound by the Terms and to follow the Terms and all applicable laws and regulations governing the Site. TOTR reserves the right to change the Terms at any time, effective immediately upon posting on the Site. Please check this page of the Site periodically. If you violate the Terms, TOTR may terminate your use of the Site, bar you from future use of the Site, cancel your ticket order, and/or take appropriate legal action against you.

The Site is separate and distinct from the TopOfTheRockPhotos.venuePhotos.com web site. Please refer to the privacy policy and terms of use for such site when using such site.

Privacy Policy.

TOTR respects the privacy of all users of the Site. [Please click here](#) to review the Privacy Policy, which also governs your visit to the Site, to understand our practices. The terms of the Privacy Policy are incorporated into, and considered part, of the Terms.

Electronic Communications.

When you visit the Site or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices to the Site. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Permitted Use.

You agree that you are only authorized to visit, view and to retain a copy of pages of the Site for your own personal use, and that you shall not duplicate, download, publish, modify, or otherwise distribute any of the material on the Site for any purpose other than to review promotional information, for personal use, or to purchase tickets or merchandise for your personal use, unless otherwise specifically authorized in writing by TOTR.

Access and Interference.

You also agree not to deep-link to the Site for any purpose, unless specifically authorized by TOTR to do so. You may not frame or utilize framing techniques to enclose any trademark, logo, image, text, page, layout, information, graphics, or other portion or aspect of the Site

without express written consent of TOTR. You may not use any meta tags or any other “hidden text” utilizing TOTR’s name or Marks (as defined below) without the express written consent of TOTR. Any unauthorized use terminates the permission or license to access the Site.

You agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or any of the content contained thereon or for any other purpose without our prior expressed written permission. You agree that you will not use any device, software or routine to interfere or attempt to interfere with the proper working of the Site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for your own personal, non-commercial use) from our website without the prior expressed written permission of TOTR.

TOTR uses reasonable endeavors to ensure that the Site is available 24 hours a day 7 days a week. However, there will be occasions when the Site will be interrupted for maintenance, upgrades and emergency repairs. Reasonable steps will be taken by TOTR to minimize such disruption where it is within the reasonable control of TOTR. You agree that TOTR shall not be liable to you for any modification, suspension or discontinuance of the Site.

Unauthorized Use of the Site.

Illegal and/or unauthorized uses of the Site, including, but not limited to, unauthorized ticket sales, unauthorized framing of or linking to the Site, or use of any robot, spider or other automated device on the Site, will be investigated and appropriate legal action will be taken, including without limitation civil, criminal and injunctive redress.

Violation of the Terms.

You understand and agree that in TOTR’s sole discretion, and without prior notice, TOTR may terminate your access to the Site, cancel your ticket or vendor order, cancel purchased tickets or vouchers without refund or exercise any other remedy available, if TOTR believes that you have in any manner violated the Terms or the law. You agree that monetary damages may not provide a sufficient remedy to TOTR for violations of the Terms and you consent to injunctive or other equitable relief for such violations. TOTR may release user information about you if required by law or subpoena, or if the information is necessary or appropriate to release to address any unlawful or harmful activity. TOTR is not required to provide any refund to you if your access to the Site is terminated, or if your tickets, vouchers, or orders are terminated or cancelled or otherwise not honored because you have violated the Terms.

Copyright Ownership.

The content and the software on the Site and the compilation thereof are each the property of TOTR and/or its suppliers and are each protected by U.S. and international copyright laws. You may not remove any notices or credits posted on the Site, or any additional information contained along with any such notices and credits.

Trademarks.

“Top of the Rock” and all logos, graphics, design, page headers, button icons, scripts and service names found on the Site are trademarks and service marks and/or are trade dress of TOTR or its licensors ([the “Marks”](#)), or of their respective owners. Many of the Marks are registered with the United States Patent and Trademark Office or the registration applications for such Marks are pending before the United States Patent and Trademark Office. TOTR and its licensors retain all right, title and interest in, to, and under the Marks, including any intellectual property rights in, to, and under the Marks. You shall not modify, alter, change, remove, copy, use, or otherwise infringe any of the Marks or any other third party trademark, service mark or any other material from the Site or the materials contained on the Site, or any copies thereof. Each of the Marks may be used publicly only with the express written consent of TOTR. You will be liable for any action that violates such terms. ROCKEFELLER CENTER is a registered trademark of Rockefeller Group, Inc. and may only be used with the express written consent of Rockefeller Group, Inc.

The software and content may not be reproduced, copied, edited, published, transmitted or uploaded in any way without the express written consent of TOTR. Except as expressly stated in the limited license provision of the Terms, TOTR does not grant any express or implied right to you under any of its trademarks, copyrights or other intellectual property. Licensing inquiries should be directed to Director of Marketing 1-212-698-2000.

Currency.

All prices are listed in United States dollars.

Ticket Information; Refunds.

Tickets are only for the date and time issued. ALL SALES ARE FINAL SUBJECT TO THE FOLLOWING REFUND POLICY. If you purchased a ticket or voucher from the Site, we may issue a refund or exchange up to 24 hours before scheduled time, from source of ticket, subject to our sole discretion. If you purchased a ticket or voucher from an authorized reseller, you will need to contact the authorized reseller to obtain a refund or exchange, which will be subject to the refund policy of such reseller. No refunds, transaction cancellations or exchanges will be issued for date or time changes or in connection with an interruption, disturbance, or other similar action that effects your visit to the Top of the Rock at 30 Rockefeller Plaza, including, without limitation, your elevator trip to the observation deck (“Top of the Rock”). Lost, stolen, or destroyed tickets are not replaceable.

Credit-Card Authorization.

When TOTR receives an order from a buyer, TOTR obtains an authorization from the buyer’s credit-card equal to the price and any applicable fees and taxes. TOTR accepts American Express, MasterCard, and Visa. Purchases by credit-card do not grant you any variances from the Terms. You are still responsible for complying with the Terms.

Disclaimers.

THE SITE AND ITS CONTENT AND ANY AND ALL RELATED PRODUCTS AND SERVICES ARE DELIVERED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. TOTR CANNOT ENSURE THAT FILES YOU DOWNLOAD FROM THE SITE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. TOTR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SITE AND THE INFORMATION, CONTENT, MATERIALS, SERVICES, OR PRODUCTS CONTAINED HEREIN OR THE OPERATION OF THE SITE. TOTR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ACCURACY OR QUALITY AND ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ASSUMES NO LIABILITY FOR ANY ERRORS AND/OR OMISSIONS IN THE INFORMATION CONTAINED IN THE SITE. TOTR DOES NOT WARRANT THAT THE SITE, ITS SERVERS, OR E-MAIL SENT FROM TOTR ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TOTR DOES NOT PROMISE THAT THE SITE WILL BE ERROR-FREE, UNINTERRUPTED, NOR THAT IT WILL PROVIDE SPECIFIC RESULTS FROM USE OF THE SITE OR ANY CONTENT, SEARCH OR LINK ON IT. TOTR DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE.

TOTR WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THE SITE, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, AND PUNITIVE AND CONSEQUENTIAL DAMAGES.

TOTR makes no guarantee of any specific result from use of the Site or use of the TOTR services or products.

TOTR DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTY USERS, TOTR USERS, ADVERTISERS AND/OR SPONSORS ON THE SITE, IN CONNECTION WITH THE TOTR SERVICES, PRODUCTS OR OTHERWISE RELATED TO YOUR USE OF THE SITE AND/OR THE SERVICES OR THE PRODUCTS. TOTR IS NOT RESPONSIBLE FOR THE PRODUCTS, SERVICES, OR ACTIONS OF ANY THIRD PARTY IN CONNECTION WITH OR REFERENCED ON THE SITE. WITHOUT LIMITING THE FOREGOING, YOU MAY REPORT THE MISCONDUCT OF USERS AND/OR THIRD PARTY ADVERTISERS, SERVICE AND/OR PRODUCT PROVIDERS REFERENCED ON OR INCLUDED IN THE SITE TO TOTR AT 1-212-698-2000, or info@topoftherock.com. TOTR MAY INVESTIGATE THE CLAIM AND TAKE APPROPRIATE ACTION, IN ITS SOLE DISCRETION.

Limitation on Liability.

EXCEPT IN JURISDICTIONS WHERE SUCH PROVISIONS ARE PROHIBITED, IN NO EVENT WILL TOTR BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING

WITHOUT LIMITATION, LOST PROFITS, EVEN IF TOTR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Links and Search Results.

The Site may contain references or links, or produce search results that reference or link to third party web sites. TOTR has no control over these sites or the content within them. TOTR does not guarantee, represent, or warrant that the content contained in any third party site is accurate, legal, or inoffensive. TOTR does not endorse the content or messages of any third party site, nor does TOTR warrant that such sites will not contain viruses or otherwise affect your computer. By using the Site to search to or to link to another site, you agree and understand that you may not make any claim against TOTR for any damages or losses, whatsoever, resulting from your use of the Site.

No Commercial Use.

Except as expressly agreed to in writing by TOTR, no area of the Site may be used by our visitors for any commercial purposes such as to purchase tickets, vouchers, merchandise, products, or services of any kind for resale. You must obtain our prior written consent to make commercial purchases of any kind. Without limiting the foregoing, you may not resell or link to other sites for the purpose of selling tickets or vouchers of any kind. We will investigate and take appropriate legal action against anyone who violates this provision, including without limitation, removing the offending communication from the Site and barring such violators from use of the Site. We reserve the right to block access to or cancel a ticket or voucher order or cancel or revoke without refund any previously purchased ticket or voucher of any user known or reasonably believed to be associated with any ticket broker or scalper, or utilizing automated means to process or place ticket orders, or whose ticket order exceeds the stated limit.

Disputes; Governing Law; and Jurisdiction.

The Site is controlled and operated by TOTR from its offices in New York. If there is any dispute which, in any manner, involves, arises out of, or relates to the Site or the Terms, including, without limitation, your use of the Site, any content, tickets, or vouchers, or any visit to 30 Rockefeller Plaza, then by using the Site, you agree that (i) all such disputes and the Terms shall be governed by and construed in accordance with the laws (both substantive and procedural) of the State of New York, without the application of the conflict of laws principles except that the federal laws of the United States of America shall be the governing laws, to the extent required, with respect to issues involving intellectual property rights, and (ii) in connection with any litigation of any such disputes arising between or among the parties, you hereby consent to the exclusive jurisdiction and venue in the courts located in New York City.

Indemnity.

You agree to indemnify and hold TOTR and its officers, agents and other partners and employees, harmless from any loss, liability, claim or demand, including reasonable attorneys'

fees, made by any third party which, in any manner arises out of or relates to your use of the Site, including a visit to 30 Rockefeller Plaza or any violation of the Terms.

Statute of Limitations.

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or the Terms, must be filed within one (1) year after such claim or cause of action arose or be forever barred.

U.S. Government Restricted Rights.

All materials, information, software and other products supplied by or through the services or products offered and/or purchased on the Site are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in the Terms and as provided in FAR 12.212(a) (1995), FAR 52.227-19, FAR 52.227-14 (ALT III), DFARS 227.7202-1(a) and 227.7202-3(a) (1995) and DFARS 252.227-7013(c)(1)(ii) (OCT 1988) et seq. or their successors. Use of any of such by the Government constitutes acknowledgment of our or our suppliers' proprietary rights in them. In the event that the Terms, or any part thereof, are deemed inconsistent with the minimum rights identified in the Restricted Right provisions, the minimum rights shall prevail.

Export.

You are responsible for compliance with all local laws, and you are required to comply with U.S. export laws and regulations when you use or export any software or materials provided through the services or products.

Comments.

If you have any comments or questions about the Site please contact us at 1-212-698-2000 or info@topoftherock.com.

Miscellaneous.

The Terms constitutes the entire agreement and sets forth the entire understanding between you and TOTR, with respect to the subject matter hereof, and supersedes all previous agreements, covenants, arrangements, discussions and negotiations, whether written or oral with respect thereto. The waiver or failure of TOTR to exercise in any respect any right provided for in the Terms shall not be deemed a waiver of any further right. In the event any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Terms, and the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions of the Terms shall not be affected thereby. The section titles in the Terms are for convenience only and have no legal or contractual effect. TOTR is not liable for delays in performance caused by circumstances beyond its reasonable control.

RULES FOR VISITING TOP OF THE ROCK

Rules, Regulations, and Procedures.

You agree to adhere to all of TOTR rules, regulations, and procedures as well as security rules when visiting 30 Rockefeller Plaza, or the Top of the Rock or both.

Access.

We may, in our sole discretion, decide to terminate, expel, or prohibit your access (and the access of anyone with you or using tickets or vouchers purchased by or for you) to the Top of the Rock if (i) for any reason, we terminate, expel or prohibit all general public access for or during the time you (or they) are otherwise scheduled to have access, or (ii) we are required or requested for any reason, by any law enforcement officer or any governmental agency or representative, to terminate, expel, or prohibit general public or your access for any or no reason, or (iii) we believe that your (or their) access violates TOTR's policies, represents a security threat, or involves or may involve objectionable conduct. You grant us permission to use your image for broadcast from or promotion of Top of the Rock.

Ticket Information; Refunds.

Tickets are only for the date and time issued. ALL SALES ARE FINAL SUBJECT TO THE FOLLOWING REFUND POLICY. We may issue a refund or exchange up to 24 hours before scheduled time, from source of ticket, subject to our sole discretion. No refunds, transaction cancellations or exchanges will be issued for date or time changes or in connection with an interruption, disturbance, or other similar action that affects your visit to the Top of the Rock. Lost, stolen, or destroyed tickets are not replaceable.

Access for Individuals with Disability.

The Top of the Rock is accessible with the use of ramps and elevators. Please contact us at 1-212-698-2000 or info@topoftherock.com, with any questions or requests for assistance. Baby strollers and guide dogs are permitted at the Top of the Rock. All other pets or animals are not permitted.

Health Issues

Pregnant women, people with heart conditions or high blood pressure, or people with other health issues should consult with a doctor before visiting the observation deck at the Top of the Rock. There are certain conditions, including, without limitation, the height of the observation deck above ground and the elevator ride which features flashing lights and views up into elevator

shaft as elevator ascends and descends, that may present a risk for certain visitors. Visitors should take any and all necessary precautions to address and avoid those risks.

Children

Children must always be accompanied by a parent, guardian, or designated caregiver while at the Top of the Rock. Ultimate responsibility for the behavior and well being of children rests with them and not with TOTR. Young children should not be left unattended at Top of the Rock. The parent, guardian, or designated caregiver can and should monitor and guide their children during their visit to Top of the Rock.

Disclaimer

TOTR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TOP OF THE ROCK AND THE FACILITIES AT THE TOP OF THE ROCK. TOTR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ACCURACY OR QUALITY AND ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ASSUMES NO LIABILITY FOR ANY LOSS, INJURY, OR DAMAGE, INCLUDING WITHOUT LIMITATION PHYSICAL OR MENTAL INJURY OR DAMAGES OR LOSS TO PROPERTY, EVEN IF DUE TO OUR NEGLIGENCE. TOTR WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM TOP OF THE ROCK OR A VISIT TO 30 ROCKEFELLER PLAZA, TOP OF THE ROCK OR BOTH, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, AND PUNITIVE AND CONSEQUENTIAL DAMAGES.

Responsibility and Risk.

You understand and acknowledge that you are responsible for your own safety, health and overall well-being during your visit to 30 Rockefeller Plaza and the Top of the Rock. You assume full responsibility for any bodily injury or property damage sustained during such visit, and understand that you are responsible for any costs and expenses associated with any such injury or damage. To the maximum extent permitted by law, you hereby release and forever discharge TOTR and its employees, agents, officers, representative and agents from any and all liability whatsoever for any and all damages, losses, harms or injuries that you sustain or property belonging to you incurs, including, but not limited to, any claims, demands, actions, causes of action, judgments, damages, costs and expenses of any nature whatsoever, including attorneys fees, which arise out of, result from, occur during or are connected in any manner to visiting 30 Rockefeller Plaza or Top of the Rock.

You agree to indemnify and hold TOTR, its subsidiaries, affiliates, officers, agents and other partners and employees, harmless from any loss, liability, claim or demand, including reasonable

attorneys' fees, made by any third party due to or arising out of your visit to 30 Rockefeller Plaza and/or Top of the Rock.

Photography Policy

Photography is permitted only at the observation deck at the Top of the Rock and only for private, personal and noncommercial use. Photographs cannot be published, sold, reproduced, transferred, distributed, or otherwise commercially exploited in any manner whatsoever. The use of a flash is prohibited. Movie and video cameras are prohibited. Tripods are not allowed unless otherwise agreed to in writing by TOTR.

TOTR reserves the right, at its sole discretion, to withhold and/or withdraw permission to photograph on its premises or to reproduce photographs.

bcc:end

EXHIBIT D

WELCOME HISTORY VISITOR INFO SHARE SHOP THE TOP CAREERS
EVENT VENUES SPECIAL OFFERS TICKET SALES GROUPS CONTACT

FAQ ABOUT THE TOP

Can I bring tripods? What about video cameras?

We do not allow tripods, monopods or video cameras on the observation deck. To set up a professional photo shoot or media taping on the Observation Deck, please contact us to discuss location fees and/or other arrangements.

[Visitor Information / FAQ / Miscellaneous / Can I bring tripods? What about video cameras?](#)



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EXHIBIT E

TOP OF THE ROCK™ Photos

Terms and Conditions

Last updated February 15, 2006

Introduction

Please read these Terms and Conditions ("Terms") carefully as they contain the legal terms and conditions that you agree to when you use the digital photography services provided to you by Event Imaging Solutions, Inc. a Kodak Company ("EIS"), in cooperation with Top of the Rock, L.L.C. ("TOTR"), through the TOP OF THE ROCK™ Photos web site (the "Photo Site") found at TopOfTheRockPhotos.venuePhotos.com (the "Service"). This Photo Site is separate and distinct from the TopOfTheRockNYC.com web site, which provides different services and products and therefore such site has a different privacy policy and different terms of use. Please refer to the privacy policy and terms of use for such site when using such site or for information on visiting the TOP OF THE ROCK™ and the observation deck at TOP OF THE ROCK™.

By using this Service you agree to be bound by these Terms. EIS and TOTR reserve the right to amend these Terms at any time without prior notice. Your use of the Service following any such modification constitutes your agreement to follow and be bound by the Terms as modified. These Terms constitute the entire agreement among you, TOTR and EIS with respect to the subject matter hereof and supersede all other communications, written or oral, with regard to the Service.

TOP OF THE ROCK™ Photos, the Photo Site, and EIS are based in the United States and, as such, the laws of the United States and of the State of New York govern your relationship with EIS and TOTR regarding the use of this Service.

1. Purpose of the Service

EIS and TOTR offer digital photography services that provide the ability to view, share and order prints of digital images taken at TOP OF THE ROCK™.

1. Availability

EIS uses reasonable endeavors to ensure that the Service is available 24 hours a day 7 days a week. However, there will be occasions when the Service will be interrupted for maintenance, upgrades and emergency repairs. Reasonable steps will be taken by EIS to minimize such disruption where it is within the reasonable control of EIS. **You agree that EIS and TOTR shall not be liable to you for any modification, suspension or discontinuance of the Service.**

2. Privacy

[Please click here](#) to review the TOP OF THE ROCK™ Photos Privacy Policy (the “Privacy Policy”) provided on the Photo Site by TOTR. The terms of the Privacy Policy are incorporated into, and considered part of, these Terms.

3. Trademarks

All brand, product and service names used in this Service which identify EIS, Eastman Kodak Company or its subsidiaries (“Kodak”), TOTR or third parties and their products and services are proprietary marks of EIS, Kodak, TOTR, and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of EIS, Kodak, TOTR or any third party with respect to any such image, logo or name.

4. Copyright

EIS is, unless otherwise stated, the owner of all copyright and database rights in the Service. TOTR, unless stated otherwise, is the content owner of any photographic material contained on this Photo Site. You may not publish, distribute, extract, re-utilize or reproduce part or all of any such content in any material form (including photocopying or storing it in any medium by electronic means).

5. Registration

To purchase from or register as a member of the Service you must be 18 years of age or over.

You agree that the information that you provide to EIS on registration and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which EIS will communicate with you about your account and your orders.

6. Password

When you register as a member you will be asked to provide a password. As you will be responsible for all activities that occur under your password, you should keep your password confidential. You must notify EIS immediately of any unauthorized use of your password or if you believe that your password is no longer confidential. EIS reserves the right to require you to alter your password if EIS believes that your password is no longer secure.

7. Storage Policy and Photo Availability

Photos taken at TOP OF THE ROCK™ and linked to a Photo Claim ID should be available online by the morning after the photos were taken. The photos must be claimed within 30 days from when they were taken. Photos not claimed within such 30 days will no longer be available. Once photos are claimed and associated with a user account, they will be available for viewing, sharing and purchasing for 60 days, after which the photos will be permanently deleted. EIS and TOTR reserve the right to not upload data of any type that might be deemed to be offensive. EIS and TOTR are not responsible for lost or missing photos.

8. Formation of a Binding Contract

When placing your order, EIS will obtain authorization from your credit card company for the amount of your order. No contract will exist between you and EIS for the supply of any services or products unless and until EIS accepts your order. Acceptance of your order shall take place when your credit card is charged which will occur upon shipment of your order. Until then EIS reserves its right to cancel your order.

9. Product Availability

Receipt of your order does not guarantee that EIS can supply the selected products to you. All the products on the Photo Site are subject to availability and EIS must therefore reserve the right to limit quantities of products it supplies, to supply only part of an order or to divide up orders, to alter the availability and duration of, and to terminate at any time, any special offers.

10. Pricing and Delivery

All prices are stated in U.S. dollars and are valid until altered by EIS. Links may be available from time to time on the Photo Site for special offers for selected products. Prices do not include any delivery charges, import duties, or value added taxes that may be added by the order destination country. Shipping and handling charges and any applicable US sales tax will be added to your order during the checkout process. In the event that you order products and the price published on the Service was incorrect, EIS will contact you to let you know the correct price and ask you whether you still wish EIS to fulfill your order at the correct price. Any dates specified for delivery of any products are intended to be an estimate only.

11. Return Policy

If for any reason, you are not satisfied with any product you purchase, simply return it within 30 days of purchase and EIS will either reprint the product at no cost to you or refund the original purchase price. Please click on the "Help" link at the bottom of this page for information regarding returns and refunds. EIS will refund your credit card or reprint your photos when your return is received.

12. Sharing of TOP OF THE ROCK™ Photos

You are responsible for naming the persons to share your photos. To share your photos online, you must provide a valid e-mail address for each recipient. Neither EIS nor TOTR is responsible for undeliverable e-mail addresses. EIS reserves the right to filter text content of the share e-mail subject line and message.

Recipients of share emails will be able to purchase prints of any or all photos included in your account. Recipients are not required to register prior to viewing your pictures.

When you delete a shared photo, it is deleted from all recipient accounts. Recipients can delete their copy of a photo which will only remove it from their account.

13. Photo Captioning

EIS reserves the right to filter text content of captions you type to describe the TOP OF THE ROCK™ photos in your account.

14. External Links

From time to time EIS may provide links that will take you to other, third party web sites. These links are provided for your convenience. If you decide to access linked web sites, you do so at your own risk. Neither EIS nor TOTR endorses or takes responsibility for the content on other web sites or the availability of other web sites and you agree that neither EIS nor TOTR is liable for any loss or damage that you may suffer by using other web sites.

15. Conduct

You agree not to use the Service:

- a. for any unlawful purposes;
- b. to upload, post, email or otherwise transmit or communicate any material that is obscene, offensive, blasphemous, pornographic, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- c. to upload, post, email or otherwise transmit or communicate any material that you do not have a right to transmit or communicate under any contractual or fiduciary relationship or which infringes any copyright, trade mark, patent or other intellectual property right or any moral right of any party including, but not limited to EIS, Kodak and TOTR;
- d. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service;

- e. to upload, post, email or otherwise transmit any material which is likely to cause harm to EIS's or TOTR's or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;
- f. to make images hosted by EIS available for viewing by the general public through a publicly posted link to the image or otherwise;
- g. for any commercial purpose other than to permit a recipient with whom you have shared your images to order photographic prints of those images;
- h. to transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation;
- i. to impersonate any person or entity, or otherwise to misrepresent your affiliation with a person or entity; or
- j. to collect, intercept or harvest screen names, to collect, intercept or store personal data about other users of the Service or to solicit or attempt to discover a user's password, screen name or other registration information without the user's express knowledge and consent.

You further agree that you shall not:

- k. interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or
- l. provide any information to EIS that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose; or
- m. resell the Service or any portion of the Service.

16. Indemnification

You understand and agree that you are personally responsible for your behavior on the Photo Site. You agree to indemnify, defend and hold harmless EIS and TOTR, and their respective parent companies, suppliers, affiliated companies, joint venturers, business partners, licensors, employees, agents, and any third-party information providers to the Service from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, or inability to use the Photo Site, the Service, or the Content, or any violation by you of these Terms.

17. Customer Feedback

EIS and TOTR do not want to receive confidential or proprietary information from you via the Photo Site. Any comments, suggestions, ideas, enhancement requests, feedback, recommendations or other information provided to EIS or

TOTR in connection with the operation or content of this Photo Site shall be considered non-confidential and non-proprietary.

You understand and agree that EIS or TOTR or their respective suppliers shall be the sole owner(s) of all information, material, or data you provide regarding the performance of, or any suggestions as to any improvement or changes to, the Service. You further agree to execute any additional documents that become necessary for EIS or TOTR or their respective suppliers to obtain, maintain, or exercise its ownership rights.

18. Termination of Membership

EIS and TOTR reserve the right in their sole discretion to terminate your use of the Photo Site and your membership if you violate any of these Terms or if your account has been inactive for more than one year.

19. Applicable Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the State of New York, without regard to its rules on conflicts of law. Any disputes arising under or in connection with these Terms shall be subject to the non-exclusive jurisdiction of the state and federal courts of the State of New York.

20. Disclaimer of Warranty and Limitation of Liability

THE SERVICE, THE PHOTO SITE, THE CONTENT, AND ALL RELATED PRODUCTS AND SERVICES ARE PROVIDED BY EIS AND TOTR "AS IS" WITH NO WARRANTIES WHATSOEVER. ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, EIS AND TOTR DISCLAIM ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE.

YOU UNDERSTAND AND AGREE THAT THE DOWNLOAD OR UPLOAD OF ANY MATERIAL THROUGH THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OR UPLOAD OF ANY MATERIAL. IN THE EVENT OF ANY MISTAKE BY EIS, SUCH AS SHIPMENT OF AN INCORRECT OR DEFECTIVE PRODUCT, EIS WILL REPLACE AND EIS AND TOTR WILL BE LIABLE ONLY TO THE EXTENT OF THE RETURN POLICY STATED IN THESE TERMS.

EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING PARAGRAPH, TO THE FULLEST EXTENT ALLOWED BY LAW, EIS AND TOTR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES RESULTING FROM THE USE OR PROVISION OF THE SERVICE, THE PHOTO SITE AND ALL RELATED PRODUCTS AND SERVICES, EVEN IF EIS OR TOTR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

21. General

EIS's and/or TOTR's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more rights or provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable.

22. Comments

If you have any comments or questions about the Service, please contact us using the "Contact Us" link at the bottom of this page.

23. Circumstances Beyond our Reasonable Control

EIS and TOTR are not liable for delays in performance caused by circumstances beyond its reasonable control and will be entitled to an extension of time for performance; examples include strikes, supplier/transport/production problems, exchange fluctuations, governmental or regulatory action and natural disasters. If such circumstances continue for more than 1 month, either party may terminate a contract for the purchase of products without compensation.

24. Miscellaneous

The title and risk of loss for products purchased by you through the Service passes to you upon delivery of such products to the EIS carrier for shipment to you. EIS may assign its rights and responsibilities hereunder without notice to you. EIS reserves the specific right to transfer the running of the Service to any other company within the Kodak group of companies. If any part of these Terms is held to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision most closely matching the intent of the original provision and the remainder of the Terms will continue in effect.

EXHIBIT F

Int. Cls.: 6, 9, 14, 16, 20, 21, 28, 35, 41, and 43

Prior U.S. Cls.: 2, 5, 12, 13, 14, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 36, 37, 38, 40, 50, 100, 101, 102, and 107

Reg. No. 3,194,827

United States Patent and Trademark Office

Registered Jan. 2, 2007

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

TOP OF THE ROCK

RCPI LANDMARK PROPERTIES, LLC (DELA-
WARE LTD LIAB CO)
C/O TISHMAN SPEYER PROPERTIES, LP
45 ROCKEFELLER PLAZA
NEW YORK, NY 10111

FOR: METAL KEY CHAINS, IN CLASS 6 (U.S.
CLS. 2, 12, 13, 14, 23, 25 AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: DECORATIVE MAGNETS, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: JEWELRY; CUFF-LINKS; ORNAMENTAL
PINS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: PAPER GOODS, NAMELY, PHOTOGRAPH
ALBUMS; ART PRINTS; CALENDARS; CHRISTMAS
CARDS; COASTERS MADE OF PAPER; DECALS;
NOTE BOOKS; NOTE PADS; PAPER BAGS FOR
PACKAGING; PLASTIC BAGS FOR PACKAGING;
PICTURE POSTCARDS; PAMPHLETS AND BRO-
CHURES ON HISTORY, ART, ARCHITECTURE
AND DESIGN, AND EVENTS AND EXHIBITIONS
RELATED THERETO, IN CLASS 16 (U.S. CLS. 2, 5, 22,
23, 29, 37, 38 AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: NON-METAL KEY CHAINS; NON-METAL
KEY FOBS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32
AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: HOUSE WARES AND GLASS, NAMELY,
BEVERAGE GLASSWARE; BOWLS; CUPS; COFFEE
CUPS; MUGS; DECORATIVE PLATES; SALT AND
PEPPER SHAKERS; DECORATIVE CRYSTAL
PRISMS; GLASS MUGS; COLLECTIBLE CERAMIC
AND GLASS FIGURINES INTENDED FOR DEC-
ORATIVE USE, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29,
30, 33, 40 AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: CHRISTMAS TREE ORNAMENTS, NAME-
LY, CHRISTMAS TREE DECORATIONS, IN CLASS
28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: ADVERTISING SERVICES PERFORMED
FOR OTHERS, NAMELY, COOPERATIVE ADVER-
TISING AND MARKETING; DISSEMINATION OF
ADVERTISING AND PROMOTIONAL MATTER;
DIRECT MAIL ADVERTISING AND PROMOTIONS;
RENTAL OF ADVERTISING SPACE; PROMOTING
THE GOODS AND SERVICES OF OTHERS BY
ARRANGING FOR SPONSORS TO AFFILIATE
THEIR GOODS AND SERVICES WITH EXHIBITS,
FESTIVALS, IN CLASS 35 (U.S. CLS. 100, 101 AND
102).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FOR: EDUCATIONAL SERVICES, NAMELY,
PROVIDING FACILITATES FOR ARTS AND CUL-
TURAL EXHIBITIONS; ORGANIZING AND CON-
DUCTING EXHIBITIONS, LECTURES AND
EVENTS IN THE NATURE OF HISTORY, ART,
ARCHITECTURE AND DESIGN; ENTERTAIN-
MENT SERVICES, NAMELY, PROVIDING OBSER-
VATION DECKS AND LONG-DISTANCE VIEWING
ATTRACTION SERVICES FROM THE TOP OF A

TALL BUILDING FOR THE PURPOSES OF SIGHT-
SEEING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2005.

FIRST USE 3-27-2006; IN COMMERCE 3-27-2006.

SN 76-978,311, FILED 7-23-2002.

FOR: RESTAURANT, BAR AND CATERING SER-
VICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

BRIAN NEVILLE, EXAMINING ATTORNEY

EXHIBIT G

Int. Cls.: 14 and 28

Prior U.S. Cls.: 2, 22, 23, 27, 28, 38, and 50

Reg. No. 3,268,693

United States Patent and Trademark Office

Registered July 24, 2007

**TRADEMARK
PRINCIPAL REGISTER**

TOP OF THE ROCK

RCPI LANDMARK PROPERTIES, LLC (DELA-
WARE LTD LIAB CO)
C/O TISHMAN SPEYER PROPERTIES, LP
45 ROCKEFELLER PLAZA
NEW YORK, NY 10111

FOR: JEWELRY, IN CLASS 14 (U.S. CLS. 2, 27, 28
AND 50).

FIRST USE 9-1-2006; IN COMMERCE 9-1-2006.

FOR: STUFFED TOY BEARS, IN CLASS 28 (U.S.
CLS. 22, 23, 38 AND 50).

FIRST USE 10-1-2006; IN COMMERCE 10-1-2006.

SN 76-433,214, FILED 7-23-2002.

BRIAN NEVILLE, EXAMINING ATTORNEY

EXHIBIT H

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Aug 29, 2006

STEPHEN W. FEINGOLD
PITNEY HARDIN LLP
7 TIMES SQ
NEW YORK, NY 10036-6524

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use " and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

The following information should be reviewed for accuracy:

SERIAL NUMBER:	78/568153
MARK:	TOP OF THE ROCK NYC (STANDARD CHARACTER MARK)
OWNER:	RCPI Landmark Properties, LLC C/o Tishman Speyer Properties, LP 45 Rockefeller Plaza New York , NEW YORK 10111

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO	Section 1(b): YES	Section 44(e): NO
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GOODS/SERVICES BY INTERNATIONAL CLASS

006 -	Metal key chains collectible figurines of non precious metal intended for decorative use
009 -	Prerecorded audio cassettes, video cassettes, compact discs and DVDs featuring information about history, art, architecture and design and events and exhibitions related thereto: decorative magnets: computer mouse pads

- 014 - Jewelry; alarm clocks; cuff-links; ornamental pins and watches
- 016 - Paper goods, namely, photograph albums; scrapbook albums; appointment books; architectural models; art prints; atlases; book covers; calendars; Christmas cards; gift cards; greeting cards; note cards; coasters made of paper; decals; maps; note books; note pads; notepaper; paper bags for packaging; paper envelopes for packaging; plastic bags for packaging; arts and crafts paint kits; mounted photographs; picture postcards; stationery writing papers and envelopes; reference books, magazines, pamphlets, brochures, and newsletters on history, art, architecture and design, and events and exhibitions related thereto; paper napkins; paper cups
- 020 - Ornaments, namely collectible wood and plastic figurines intended for decorative use; non-metal key chains; non-metal key fobs
- 021 - Housewares and glass, namely, beverage glassware; bowls; cups; coffee cups; mugs; decorative plates; salt and pepper shakers; decorative crystal prisms; glass mugs; collectible ceramic and glass figurines intended for decorative use
- 025 - Clothing, namely, caps, jackets, night shirts, pajamas, robes, sweatshirts, t-shirts, polo shirts, golf shirts and sports shirts, sold on or adjacent to observation deck at New York City's Rockefeller Center
- 028 - Toys, namely, toy banks; stuffed toy bears; stuffed toy animals; toy building blocks; toy construction blocks; board games; music box toys; manipulative puzzles; toy spinning-tops; toy model train sets; Christmas tree ornaments, namely, bells; Christmas garlands; Christmas tree decorations; Christmas tree skirts; Christmas tree stand covers
- 035 - Advertising services performed for others, namely, cooperative advertising and marketing; dissemination of advertising and promotional matter; direct mail advertising and promotions; rental of advertising space; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with exhibits, festivals
- 041 - Educational services, namely, providing facilitates for arts and cultural exhibitions; organizing and conducting exhibitions, lectures and events in the nature of history, art, architecture and design; entertainment services, namely, providing observation decks and long-distance viewing attraction services from the top of a tall building for the purposes of sightseeing
- 043 - Restaurant, bar and catering services

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

EXHIBIT I



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Find Domain Name Holder



[Request This Name](#)

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Whois Result for floradesignny.com @ whois.melbourneit.com

Registrant

Name	Kimie Miyamoto
Address	7121 Loubet Street
Address	Forest Hills
Address	11375
Address	NY
Address	UNITED STATES

Domain

Name	floradesignny.com
CreatedDate	2002-02-23
UpdatedDate	2002-02-23
ExpiresDate	2014-02-23
NameServer	yns1.yahoo.com
NameServer	yns2.yahoo.com
Status	clientTransferProhibited

AdminContact

Name	Kimie Miyamoto
Address	7121 Loubet Street
Address	Forest Hills
Address	11375
Address	NY
Address	UNITED STATES
Email	kimie@floradesignny.com
Phone	+1.2127414460
Fax	+1.2127416430

TechContact

<i>Name</i>	Kimie Miyamoto
<i>Address</i>	7121 Loubet Street
<i>Address</i>	Forest Hills
<i>Address</i>	11375
<i>Address</i>	NY
<i>Address</i>	UNITED STATES
<i>Email</i>	kimie@floradesignny.com
<i>Phone</i>	+1.2127414460
<i>Fax</i>	+1.2127416430

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[Service](#)

EXHIBIT J



Flora Design, Inc.

211 West 28th Street 2nd Floor New York, NY 10001

Tel:212-741-4460 Fax:212-741-6430

kimie@floradesignny.com

www.floradesignny.com

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Tel (212) 741-4460
Fax (212) 741-6430
kimie@floradesignny.com



Wedding Flowers & Sites *wedding planner*



Best Bets Package	Bouquets	Reception Flowers	Centerpieces	New York Best Wedding Sites
Free Consultation	Flower School	About Us	About Kimie	Contact

New York Best Wedding Pack Under \$3000



Statue of Liberty Wedding



X'mas Wedding at
Rockefeller Plaza



Manhattan Yacht Wedding
Pack price is not applicable



**"Secret Garden" at CENTRAL PARK
Wedding**

United Nations Wedding



Brooklyn Botanic Garden Wedding

Top of The Rock Wedding

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EXHIBIT K



Tel (212) 741-4460
Fax (212) 741-6430
kimie@floradesignny.com

Flora Design, Inc.

211 West 28th Street 2nd Floor, New York, NY 10001

Tel:212-741-4460 Fax:212-741-6430

kimie@floradesignny.com

www.floradesignny.com

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Wedding

B.B.Garden Wedding

Manhattan Yacht
Wedding

Flora Design School

About
Kimie Miyamoto

Free Wedding
Flowers Consultation

Best Bets Flowers

Reception Flowers

21st. Century Best Wedding Site in New York City

New York Wedding Under \$3000

Top of The Rock Wedding



No other place in the world where you will have a romantic wedding ceremony up & up in the sky: Unobstructed for 360 degrees of transparent glasses.

Top of The Rock, 70th floor is the newest style of contemporary wedding for a bride and a groom. Top of The Rock, a New York City landmark is located in the heart of Manhattan. Its history began with Mr. John D. Rockefeller in 1933.

Your wedding will be a thrilling and unforgettable experience. You will be celebrated by many people from the around world. Celebrating messages "Congratulations! Congratulations! Congratulations!" echoes up & up in the air.



Bouquets

Centerpieces

Memoire of
World Trade Center

E-Mail Us



Over looking the Empire State Building & Down town Manhattan



Bridal veil up & up in the sky on 70th Fl.

This package includes: \$2980

- 1) Ceremony fee
- 2) Officiant
- 3) Escort & Coordinator
- 4) Bridal Bouquet
- 5) Groom's boutonniere
- 6) Attendants Corsages(4) & Boutonniere(4)
- 7) Bride & Groom's Photography 8"x10" Framed(2)
- 8) Tickets for the Top of The Rock for Bride and Groom
- 9) T-Shirts of NY for Bride and Groom
- Photo Album (Optional)
- Limousine (Optional)



Swarovski crystal chandelier



Bride with naughty girls

We suggest you to make a reservation at least 3 months in advance to reserve your date. For the details, e-mail or call us. We'll be glad to help you. This package is available throughout the year except US major holidays.



Over looking Central Park



Sunset on the Top of The Rock



Christmas wedding at the Top of The Rock

Contact Us

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EXHIBIT L



Flora Design, Inc.

211 West 28th Street 2nd Floor New York, NY 10001

Tel:212-741-4460 Fax:212-741-6430

kimie@floradesignny.com

www.floradesignny.com

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21st. Century Best Wedding Site in New York City

New York Wedding Under \$3000

X'mas at Rockefeller Center Wedding



The ceremony will be held at the United Nations Church Center (indoor). Immediately following the ceremony, you will enjoy a champagne toast at the Millennium UN Plaza Hotel.

At Rockefeller Center, would you like to be a lucky bride and groom to be photographed in front of this jeweled like Christmas tree illuminated over 20.000 lights in red ruby, white diamonds, blue sapphire and green emerald on your wedding day?

Photo shooting will be romantic and unforgettable memory.

This package is only available from the beginning of December to the end of December.

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Wedding

Secret Garden at
Central Park Wedding

X' mas Wedding at
Rockefeller Center

Top of The Rock
Wedding

United Nations
Wedding

B.B.Garden Wedding

Manhattan Yacht
Wedding

Flora Design School

About
Kimie Miyamoto

Free Wedding
Flowers Consultation

Best Bets Flowers

Reception Flowers

Bouquets

Centerpieces

**Memoire of
World Trade Center**

E-Mail Us

This Package Includes: \$2980

- 1) Ceremony at the UN Church fee
- 2) Officiant
- 3) Escort & Coordinator
- 4) Church Altar Arrangement
- 5) Bridal Bouquet & Groom's Boutonniere
- 7) Attendants Corsages(4) & Boutonnieres(4)
- 8) Champagne toast at UN Plaza Hotel
- 9) T-Shirts of NYC for Bride & Groom
- 10) Photo session at the Rockefeller Plaza
- 11) Bride & Groom's Photography 8"x10" Framed(2)
- 11) Horse Carriage(depends on weather condition)
- Limousine (optional) -Photo Album(Optional)

For additional information [e-mail](#), call or fax us. We'll be glad to be of your help. This package is available from the beginning of December to the end of December. We suggest you make a [reservation](#) at least 3 months in advance.



Image photo of X'mas, Rockefeller Plaza



Virginia
Rose



Ranunculus
Pearl White



Vogue
Rose



Terracotta
Rose

Contact Us

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EXHIBIT M

Smy, Brooke

From: Smy, Brooke
Sent: Monday, December 11, 2006 3:07 PM
To: 'kimie@floradesignny.com'
Subject: Re: Film and photography request

Kimie, we cannot section off any areas for you but you are more than welcome to take photos in front of the Tree, angels. With the equipment you are using and for this purpose, you do not necessarily need our permission (unless you were to use the photos for promotional purposes, etc.). You need to contact Alexia MacIntosh for Top of the Rock at 212.332.6504. Thanks again.....Brooke

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Flora Design, Inc. <kimie@floradesignny.com>
To: Smy, Brooke
Sent: Mon Dec 11 15:01:12 2006
Subject: Re: Film and photography request

12/11/2006

Smy Brooke,

I emailed you 12/7/2006.
Please find the following info below.
Thank you,

Kimie Miyamoto

12/7/2006
Rockefeller Center
Marketing Department

Dear Sir or Madame,

Re: Film and photography request

* Company Name: Flora Design, Inc.
* Address: 211 West 28th Street. 2nd Fl., New York, NY 10001
* Phone Number: 212.741.4460
* Contact Person: Kimie Miyamoto
* Date and Time: 1) 12/13/2006 3:30pm-4:30pm 2) 12/30/2006 2:30pm-3:30pm
* Purpose of shoot: Wedding
* Number of people: 1) 8 2) 22
* All equipment: 1) Regular Digital camera 2) Regular Digital camera & Handycam video camera
* Specific locations: In front of Christmas tee, In front of angels and inside Top of the Rock

The Couples are from Japan and they are very excited to visit Rockefeller Center and Top of the Rock.
Thank you for your cooperation to this matter in advance.

Kimie Miyamoto, Designer,
Flora Design, Inc.
211 West 28th Street. 2nd Fl.
New York, NY 10001
Tel:212-741-4460
Fax:212-741-6430
www.floradesignny.com <<http://www.floradesignny.com>>
kimie@floradesignny.com <<mailto:kimie@floradesignny.com>>

----- Original Message -----

From: Smy, Brooke <mailto:BSmy@TishmanSpeyer.com>
To: Flora Design, Inc. <mailto:kimie@floradesignny.com>
Sent: Monday, December 11, 2006 2:15 PM
Subject: RE: Film and photography request

Kimie,

Please let me know the following:

- Date/Time
- Equipment
- Crew Size

Thanks again,

Brooke

From: Flora Design, Inc. [mailto:kimie@floradesignny.com]
Sent: Monday, December 11, 2006 1:54 PM
To: Smy, Brooke
Subject: Re: Film and photography request

Smy, Brooke,

A bride and a groom would like to take photos in front of Christmas tree, in front of angeles and inside Top of the Rock.
This is not commercial use. Film and photos are used only for the couples album.

Kimie Miyamoto, Designer,
Flora Design, Inc.
211 West 28th Street. 2nd Fl.
New York, NY 10001
Tel:212-741-4460
Fax:212-741-6430
www.floradesignny.com
kimie@floradesignny.com

----- Original Message -----

From: Smy, Brooke <mailto:BSmy@TishmanSpeyer.com>
To: Flora Design, Inc. <mailto:kimie@floradesignny.com>
Sent: Monday, December 11, 2006 12:32 PM
Subject: RE: Film and photography request

Hi Kimie,

Please let me know what you are looking to film.

Regards,

Brooke

Brooke K. Smy
Marketing & Communications Manager
Tishman Speyer
45 Rockefeller Plaza, 12th Floor
New York, NY 10111
T - 212.588.8634
F - 212.479.8634

From: Flora Design, Inc. [mailto:kimie@floradesignny.com]
Sent: Monday, December 11, 2006 11:54 AM
To: Film Request
Subject: Film and photography request

12/11/2006

Rockefeller Center
Marketing Department

Dear Sir or Madame,

I am Kimie Miyamoto, Flora Design. On December 17th, I requested permission on film and photography for two occasions on 12/13/06 and 12/30/06. I have not heard anything from you yet. Please let me know what step is needed or should we simply bring the letter on 12/07/06. We had a wedding photography at Rockefeller Center and on the Top of the Rock last year as well.

Thank you for your coopertion to this matter in advance.

Attachment: a letter from Mr. Immelt

Kimie Miyamoto, Designer,
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EXHIBIT N



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, D.C.

STEPHEN W. FEINGOLD

Attorney At Law

7 Times Square

New York, NY 10036

T: 212 297 5845 F: (212) 916 2940

SFeingold@daypitney.com

July 16, 2007

VIA FACSIMILE AND REGULAR MAIL

Ms. Kimie Miyamoto
Flora Design, Inc.
211 West 28th Street, 2nd Floor
New York, New York 10001
Kimi@floradesignny.com
Facsimile: 212-741-6430

Re: Top of the Rock Infringement

Dear Ms. Miyamoto:

We are outside intellectual property counsel to Tishman Speyer Properties, L.P.; RCPI Landmark Properties, LLC, the owner of part of the Rockefeller Center complex; and their affiliate Top of the Rock LLC, the owner and operator of the TOP OF THE ROCK Observation Deck located at the Rockefeller Center complex (collectively "TOTR") in connection with the protection of its Intellectual Property rights.

In December of 2006 you, on behalf of Flora Design, Inc. ("FDI"), contacted the Marketing Department of Rockefeller Center by email and requested its assistance to take a wedding photograph in front of the ROCKEFELLER CENTER CHRISTMAS TREE. You specifically stated that "[t]his is not a commercial use. Film and photos are used only for the couples [sic] album." In response Smy Brooke on behalf of the marketing department advised you that while no accommodations could be made to facilitate the photograph you did not need its permission "unless you were to use the photos for promotional purposes etc."

It has come to our clients' attention that FDI's website at http://www.floradesignny.com/WeddingNewYorkFlowerSchoolSince1961_RockefellerCenterEnglish.html consists of a promotion for a "Rockefeller Center Christmas Tree Wedding" As part of the promotion of this package the website includes at least one photograph taken in front of the ROCKEFELLER CENTER CHRISTMAS TREE.

The use of the image is in direct contravention of the written assurances you, on behalf of FDI, provided to RCPI as well as the limitations expressly communicated to you by



Ms. Kimie Miyamoto
July 16, 2007
Page 2

Smy Brooke on December 11, 2006. In addition please be advised that we have notified Rockefeller Group, Inc., the owner of the ROCKEFELLER CENTER trademark, because in our view your use also infringes this trademark.

In addition, we advise you that RCPI is the current owner of record of a federal registration of TOP OF THE ROCK, Reg. No. 3194827, for a variety of services including entertainment services in class 41 and photography related goods in class 16. RCPI is also the owner of record of an application to register TOP OF THE ROCK NYC for those same goods and services. A Notice of Allowance has issued for this application and the registration will issue once the evidence of use is provided to the Trademark Office.

It has recently come to our client's attention that FDI is also promoting a TOP OF THE ROCK Wedding. As explained on your website, located at <floradesignnny.com>, for \$1,980 you purport to offer a wedding package including a ceremony at the TOP OF THE ROCK Observation Deck together with photographs and other amenities. The web site also includes several photographs taken from the TOP OF THE ROCK Observation Deck. There are multiple uses of the TOP OF THE ROCK trademark.

Our clients demand that you stop promoting or offering any wedding packages that include either ceremonies at or images taken from the TOP OF THE ROCK Observation Deck. Specifically, your use of the TOP OF THE ROCK trademark to promote your goods and service is likely to cause confusion as to Flora Designs affiliation with or sponsorship by TOTR. It is therefore a violation of TOTR's rights under the Section 42 of the Lanham Act.

Furthermore, access to the TOP OF THE ROCK Observation Deck is conditioned on TOTR's policy which limits photography on the deck to personal and noncommercial use only. These policies are clearly set forth on the back of the admission ticket as well as on the Internet at <https://www.topoftherocknyc.com/ODTStatic/Web/LinkedFiles/TermsOfUse.pdf> under "Photography Policy." Use of these images for profit in connection with a wedding package violates this policy.

We look forward to receiving appropriate assurances from you that you have ceased all use of (1) the photograph of the ROCKEFELLER CENTER CHRISTMAS TREE referred to in this letter and (2) the TOP OF THE ROCK trademark and are no longer promoting or offering TOP OF THE ROCK weddings or wedding packages by no later than July 30, 2007. In the



Ms. Kimie Miyamoto
July 16, 2007
Page 3

event that we do not hear from you by that date we will advise our client accordingly and take all steps necessary to protect our client's rights.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stephen W. Feingold', written over the typed name.

Stephen W. Feingold

SWF/zrw

cc: Christine Goodgold, Esq.
Top of the Rock, LLC

Vincent Palladino, Esq.
Counsel for Rockefeller Group, Inc.

EXHIBIT O



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, D.C.

STEPHEN W. FEINGOLD
Attorney At Law

7 Times Square
New York, NY 10036
T: 212 297 5845 F: (212) 916 2940
SFeingold@daypitney.com

September 25, 2007

VIA REGULAR MAIL
CERTIFIED MAIL – RETURN RECEIPT REQUESTED
FEDERAL EXPRESS (SIGNATURE REQUIRED)

Ms. Kimie Miyamoto
Flora Design, Inc.
211 West 28th Street, 2nd Floor
New York, New York 10001
Kimi@floradesignny.com
Facsimile: 212-741-6430

Re: Top of the Rock Infringement

Dear Ms. Miyamoto:

As you know, this firm is outside intellectual property counsel to Tishman Speyer Properties, L.P.; RCPI Landmark Properties, LLC, the owner of part of the Rockefeller Center complex; and their affiliate Top of the Rock LLC, the owner and operator of the TOP OF THE ROCK Observation Deck located at the Rockefeller Center complex (collectively "TOTR") in connection with the protection of their Intellectual Property rights.

I write further to my letter dated July 12, 2007 wherein we advised you that the use of a photograph on FDI's website at http://www.floradesignny.com/WeddingNewYorkFlowerSchoolSince1961_RockefellerCenterEnglish.html consisting of a promotion for a "Rockefeller Center Christmas Tree Wedding" violated the direct contractual assurances you provided us in December of 2006.

As of today your website continues to use the infringing photograph.

Additionally, in our July 12, 2007 letter we advised you that your promotion of a TOP OF THE ROCK Wedding was not lawful. Specifically, as explained on your website, located at <floradesignny.com>, for \$1,980 you purport to offer a wedding package including a ceremony at the TOP OF THE ROCK Observation Deck together with photographs and other amenities. The web site also includes several photographs taken from the TOP OF THE ROCK Observation Deck. There are multiple uses of the TOP OF THE ROCK trademark. As part of

P DAY PITNEY LLP

Ms. Kimie Miyamoto
September 25, 2007
Page 2

the promotion of this package the website includes at least one photograph taken in front of the ROCKEFELLER CENTER CHRISTMAS TREE.

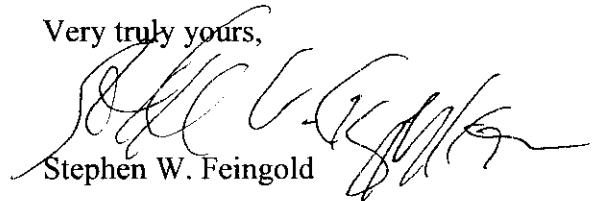
Weddings at TOP OF THE ROCK may only occur with the permission of our client. The insinuation that you offer such a service is likely to mislead consumers that you have some established relationship with TOTR. You do not. Therefore, your use of the TOP OF THE ROCK trademark constitutes infringement of TOTR's rights and is actionable under both federal and state law.

As also explained in our July 12 letter, access to the TOP OF THE ROCK Observation Deck is conditioned on TOTR's policy which limits photography on the deck to personal and noncommercial use only. These policies are clearly set forth on the back of the admission ticket as well as on the Internet at <https://www.topoftherocknyc.com/ODTStatic/Web/LinkedFiles/TermsOfUse.pdf> under "Photography Policy." Use of these images for profit in connection with a wedding package violates this policy.

Your decision to ignore our July 12th letter and to continue your unlawful activity is not acceptable to TOTR. We write to advise you that absent the immediate removal of this material from the Internet and written assurances that you will stop these practices in the future will compel our client to take further action to prevent the continuing violation of its rights.

Please respond to this letter by no later close of business, Friday October 5, 2007. Of course, this letter is without prejudice to any and all claims which TOTR has or may have against you regardless of whether they are asserted herein and all of which are expressly reserved.

Very truly yours,



Stephen W. Feingold

cc: Christine Goodgold, Esq.
Top of the Rock, LLC

Vincent Palladino, Esq.
Counsel for Rockefeller Group, Inc.

EXHIBIT P



ROPES & GRAY LLP

1211 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8704 212-596-9000 F 212-596-9090
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

September 25, 2007

Vincent N. Palladino
212-596-9070
Vincent.Palladino@ropesgray.com

BY E-MAIL AND REGULAR MAIL

Ms. Kimmie Miyamoto
Flora Design, Inc.
211 West 28th Street, 2nd Floor
New York, New York 10001
Kimi@floradesignny.com

Dear Ms. Miyamoto:

Our client Rockefeller Group, Inc. has asked us to contact you regarding your website at http://www.floradesignny.com/Wedding/NewYorkFlowerSchoolSince1961_RockefellerCenterEnglish.html which promotes a "Rockefeller Center Christmas Tree Wedding".

Rockefeller Group is the owner of the ROCKEFELLER CENTER service mark for a variety of services including Christmas tree lighting services. As a result of widespread use for many years, this mark has become a very valuable asset.

Your use of "Rockefeller Center" as described above is likely to cause the public to believe that you and your services originate with, are sponsored by or are associated with Rockefeller Group, which is not the case. This infringes and dilutes the ROCKEFELLER CENTER mark in violation of federal and state trademark laws.

I request that you promptly provide me with your written assurances that you will discontinue the foregoing use of "Rockefeller Center" and refrain in the future from using "Rockefeller Center."

Very truly yours,


Vincent N. Palladino

VNP:emf

cc: Gerald W. Blume, Esq.
Stephen Feingold, Esq.

EXHIBIT Q



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, D.C.

REBECCA L. GRIFFITH
Attorney At Law

7 Times Square
New York, NY 10036
T: (212) 297-2483 F: (212) 916-2940
rlgriffith@daypitney.com

November 9, 2007

Ms. Kimie Miyamoto
Flora Design, Inc.
211 West 28th Street, 2nd Floor
New York, NY 10001

Re: Top of the Rock Infringement

Dear Kimie:

Thank you for your email of November 9, 2007. Since you have asked for more time in which to respond to our previous letters, please review them and let us know your response by November 30, 2007.

Very truly yours,

A handwritten signature in cursive script that reads 'Rebecca L. Griffith'.

Rebecca L. Griffith

EXHIBIT R

Brodsky, Rachel

From: Williams, Zandra
Sent: Tuesday, January 15, 2008 12:19 PM
To: Brodsky, Rachel
Subject: Defendants' November 18 e-mail

-----Original Message-----

From: Flora Design, Inc. [mailto:kimie@floradesignny.com]
Sent: Sunday, November 18, 2007 12:38 PM
To: Griffith, Rebecca L.
Subject: Re: Top of the Rock & Christmas Tree

Dear Ms. Rebecca Griffith,

Re: Christmas Tree photo at Rockefeller Center & Top of the Rock photo

Regarding the Christmas Tree photo, I took the photo myself a decade ago at night as everyone took photos including many visitors, tourists, etc. from around the world. The very photo belongs to myself and it is intelligent property of mine if you call so.

Regarding the photo of the Japanese couple on the top of the rock on December 2003, I applied a photo permission from top of the rock. This is not a ceremony on the top of the rock. It is only a photoshoots on top of the rock as everyone takes photos on the observation deck with admission tickets paid.

We were not given any tickets from Top of the Rock that your policies on the back of the admission tickets. At the entrance, we showed to the admission persons to hand our printed out the lists of names who reserved tickets & paid by credit cards through computer.

I mailed these photos to Mr. Immelt, chairman, General Electric. He thanked me for the photos. So, I thought I have the rights to use them as everyone does & did.

I went to bookstores in NYC to check if The Top of the Rock photos & Christmas Tree photos at Rockefeller Center are used in books, magazines, newspapers & postcards and even at Duane Reed Drug Stores sold & sell a huge size of photos of Christmas Tree at Rockefeller Center.

You should be glad that they write articles, stories along with the photos of Christmas tree at Rockefeller center and Top of the Rock.

Are they violating its Intellectual Property rights including me? They are not. On the contrary, they are the ones promoting your beautiful landmark places of NYC.

You should thank them for their promotion with free advertisements. So, more and more people from around the world will visit Christmas Tree at Rockefeller center and Top of the Rock. In another words, Christmas Tree at Rockefeller center and Top of the Rock has been "pronouns" for everyone throughout the world.

I have learned from magazines & local newspapers that Christmas lighting ceremony this year at Rockefeller center to be held on November 28th, 2007. Publishers of magazines & newspapers used Christmas Tree photos at Rockefeller center and Top of the Rock like many medias who are not violating your intellectual property rights including me for your benefit, for the good and for the best of Top of the Rock.

Please keep in mind that we all promote these beautiful sites and we all promote NYC's landmarks for many people to visit from around the world to the capital of the world, NYC: The Big Apple.

Regarding wedding package idea at NYC landmark, I was a college student in 1961 with little money, an American boy friend proposed me to get married. I thought it was great ideas to have a wedding ceremony in NYC's landmark because a couple does not have to spend much money yet they will cherish all of their memories forever through photos taken at landmark in NYC.

Why is NYC the third most attractive city to visit in the world? Because people around the world will bring good ideas to this city: artwise, economywise, educationwise, fashionwise, medicalwise, musicwise, sportwise, theatrewise, tourismwise (alphabetic orders) and too many to mention.

Why is United States of America still the strongest country in the world? Because people around the world has brought good and innovative ideas to this country.

Rebecca, I am an artist & designer and believe that I am one of the persons who has promoted NYC's tourism & economy and will continue promoting NYC's tourism in the future including NYC's landmark weddings only because I love NYC.

P.S. Should I call Christmas Tree at Fifth Avenue instead?
Should I call Top of the Sky instead?

With best regards,

Kimie Miyamoto, Designer,
Flora Design, Inc.
211 West 28th Street. 2nd Fl.
New York, NY 10001
Tel: 212-741-4460
Fax: 212-741-6430
www.floradesignny.com
kimie@floradesignny.com